

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

HEARTS ON FIRE COMPANY, LLC,

Plaintiff,

v.

EIGHTSTAR DIAMOND COMPANY,

Defendant.

CIVIL ACTION NO. 04 12258-JLT

MAGISTRATE JUDGE ROBERT B.
COLLINGS

**DEFENDANT'S MOTION FOR LEAVE TO SUBMIT SURREPLY TO PLAINTIFF'S
MOTION TO DISMISS COUNTERCLAIMS**

Defendant EightStar Diamond Company ("EightStar") moves for leave to submit a surreply to Hearts on Fire Company LLC's ("HOF") Motion to Dismiss Counterclaims in the above captioned matter. In support of its motion for leave, EightStar states the following:

1. As of February 1st & 8th 2005, the United States Patent and Trademark Office published for opposition two of HOF's trademark applications which are directly at issue in this case.

2. EightStar has requested that this Court take jurisdiction over the registrability and validity of the HOF marks. HOF has moved to dismiss EightStar's counterclaim. If EightStar is forced to file a notice of opposition to HOF's published marks, EightStar will be litigating in two nearly identical proceedings over the validity of the same marks. As such, the submission of a surreply is essential for the Court to have all the facts and for full consideration of the motion to dismiss and the response and reply thereto.

3. In order to serve the interests of judicial efficiency and economy, and to avoid the necessity for nearly identical cases to be pursued simultaneously, it is important that EightStar present all evidence relevant to this case.

4. EightStar's proposed surreply is attached hereto as Exhibit A.

WHEREFORE, EightStar requests that this Court grant EightStar's Motion For Leave To Submit Surreply To HOF's Motion To Dismiss EightStar's Counterclaims.

EIGHTSTAR DIAMOND COMPANY

By its attorneys,

MILLER NASH LLP

/s/ Adele Conover

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Admitted *Pro Hac Vice*

Dated: February 18, 2005

Certificate of Compliance with Local Rule 7.1(a)(2)

I, Adele Conover, hereby certify that on February 17, 2005, Valerie du Laney of this office conferred and attempted in good faith to resolve or narrow the issue stated herein, with Plaintiff's counsel, Mark Robins.

/s/ Adele Conover

Adele Conover